

# EXHIBIT A

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF CALIFORNIA

3 HONORABLE LARRY ALAN BURNS, JUDGE PRESIDING

4 UNITED STATES OF AMERICA, )  
5 )  
6 PLAINTIFF, ) CASE NO. 08CR00416-LAB  
7 )  
8 VS. )  
9 FRANCISCO ESPARZA-GUTIERREZ, ) SAN DIEGO, CALIFORNIA  
10 ) MARCH 24, 2008  
11 ) 9:30 A.M.  
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11 REPORTER'S TRANSCRIPT

12 ACCEPT PLEA WITHOUT P.O. REPORT

14 APPEARANCES:

15 FOR THE GOVERNMENT:

KAREN P. HEWITT, U.S. ATTORNEY  
BY: MARK CANOVER, ESQ.  
ASSISTANT U.S. ATTORNEY  
880 FRONT STREET  
SAN DIEGO, CA 92101

18 FOR THE DEFENDANT:

FEDERAL DEFENDERS, INC.  
BY: DAVID PETERSON, ESQ.  
225 BROADWAY, SUITE 900  
SAN DIEGO, CA 92101

20 COURT REPORTER:

EVA OEMICK  
OFFICIAL COURT REPORTER  
UNITED STATES COURTHOUSE  
940 FRONT STREET, STE. 2190  
SAN DIEGO, CA 92101  
TEL: (619) 615-3103

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LOOK, HERE IS WHAT'S NOT AT ISSUE HERE. THEY DIDN'T  
KNOW ABOUT THIS PRIOR WHEN THEY ENTERED INTO THE PLEA  
AGREEMENT. I THINK, MR. CANOVER, MR. PETERSON HAS GOT A  
POINT. YOU NEED TO CHANGE THE STANDARD FORM PLEA AGREEMENT.  
THE CHANGE IN CRIMINAL HISTORY ALSO MIGHT AFFECT THE  
GUIDELINES, AND I THINK YOU NEED TO LEAVE YOURSELF THAT OUT.

HERE IT ADDS FOUR POINTS. SO YOU ARE IN A POSITION  
OF EITHER SAYING, "JUDGE, IGNORE THAT RELEVANT PROVISION OF  
THE GUIDELINES THAT OUGHT TO APPLY BECAUSE YOU PROMISED THAT"  
OR COMPLYING WITH YOUR DUTY OF CANDOR TO SAY YOU DIDN'T SEE  
IT, BUT THIS IS THE WAY THE GUIDELINES SHOULD CALCULATE OUT.

MR. CANOVER: I AGREE, YOUR HONOR. I BROUGHT THAT  
UP. WE ARE WORKING ON THAT.

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6 MR. CANOVER: I THINK DEFENSE COUNSEL MAY BE  
7 ALLUDING TO THE FACT THAT WE HAVE NOT YET RECEIVED THE  
8 DEPORTATION DOCUMENTS ON THE CONVICTION THAT WE WERE UNAWARE  
9 OF AND PROVIDED THEM TO DEFENSE COUNSEL. OF COURSE, WE HAVE  
10 NOT PROVIDED THOSE TO THE COURT.  
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1 AND SENTENCE I JUST PRONOUNCED. YOUR NOTICE OF APPEAL HAS TO  
2 BE FILED WITH THE NEXT 10 DAYS IN THIS COURT. MR. PETERSON  
3 WILL HELP YOU IF YOU CHOOSE TO APPEAL OR THE CLERK OF THE  
4 COURT WILL. BECAUSE YOU ARE INDIGENT, YOU HAVE A RIGHT TO  
5 FILE A FREE APPEAL.

6 DO YOU UNDERSTAND YOUR RIGHT TO APPEAL?

7 THE DEFENDANT: YES.

8 THE COURT: THE COURT DECLINES TO IMPOSE A FINE.

9 MR. CANOVER, THIS IS A CASE WHERE I THINK HE'LL NEED WHATEVER  
10 MONEY HE HAS ON THE BOOKS TO GET BACK TO MEXICO. IF YOU MOVE  
11 TO REMIT THE PENALTY ASSESSMENT, I WILL GRANT THAT MOTION.

12 MR. CANOVER: SO MOVED, YOUR HONOR.

13 THE COURT: PENALTY ASSESSMENT IS REMITTED.

14 GOOD LUCK. MR. ESPARZA, DON'T COME BACK. THE  
15 SENTENCE IS NECESSARILY GOING TO BE MORE NEXT TIME.

16 THE DEFENDANT: THANK YOU.

17 MR. PETERSON: THANK YOU, YOUR HONOR.

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20 I HEREBY CERTIFY THAT THE TESTIMONY  
21 ADDUCED IN THE FOREGOING MATTER IS  
22 A TRUE RECORD OF SAID PROCEEDINGS.

23 S/EVA OEMICK 4-8-08

24 EVA OEMICK DATE  
25 OFFICIAL COURT REPORTER

# EXHIBIT B

1 KAREN P. HEWITT  
United States Attorney  
2 CALEB E. MASON  
Assistant United States Attorney  
3 California Bar No. 246653  
Federal Office Building  
4 880 Front Street, Room 6293  
San Diego, California 92101-8893  
5 Telephone: (619) 557-5956/(619) 235-4716 (Fax)  
Email: caleb.mason@usdoj.gov  
6

Attorneys for Plaintiff  
7 United States of America

8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA, ) Criminal Case No. 08CR0416LAB  
11 )  
Plaintiff, )  
12 )  
v. ) STATUS REPORT  
13 )  
FRANCISCO ESPARZA-GUTIERREZ, )  
14 )  
Defendant. ) Date: July 28, 2008  
15 ) Time: 3 p.m.  
) Honorable: Larry A. Burns  
16 ) Courtroom:

17 The UNITED STATES OF AMERICA, by and through its counsel, KAREN  
18 P. HEWITT, United States Attorney, CALEB E. MASON, Assistant United  
19 States Attorney, hereby files the following Status Report.  
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1 On February 19, 2008, defendant Francisco Esparza-Gutierrez  
2 ("Defendant") was charged by Information with one count alleging  
3 violation of 8 U.S.C. § 1326.

4 On February 26, 2008, Defendant pleaded guilty before Magistrate  
5 Judge Jan M. Adler, pursuant to a plea agreement in which the parties  
6 agreed that Defendant's Offense Level was ~~8~~ 6 C 201.

7 On February 28, 2008, the United States filed a Sentencing  
8 Summary Chart which recommended a sentence of 60 days based on a  
9 calculation of an offense level of 6 and a Criminal History Category  
10 of I.

11 On March 21, 2008, the United States filed an Amended Sentencing  
12 Summary Chart which again recommended a sentence of 60 days, but  
13 listed an offense level of 10 and a Criminal History Category of III.

14 On March 24, 2008, this Court accepted Defendant's guilty plea  
15 and sentenced him to a term of nine months' imprisonment, followed by  
16 five years of probation.

17 On March 28, 2008, Defendant filed a Notice of Appeal.

18 On June 4, 2008, Defendant filed his Opening Brief.

19 On June 27, 2008, the United States filed a Motion for Summary  
20 Reversal and Remand. In the motion the United States cited Ninth  
21 Circuit caselaw holding that 18 U.S.C. § 3563(b) does not permit a  
22 sentence of a straight term of imprisonment followed by a term of  
23 probation. The United States argued that in light of the need for  
24 remand for resentencing, any other claims arising out of the earlier  
25 sentencing proceeding were moot.

26 As of June 28, 2008, the United States cannot present to the  
27 Court the original I-205 Warrant of Removal documenting Defendant's  
28 alleged deportation on or about January 20, 2008. Accordingly, the



1 United States will file under separate cover a Second Amended  
2 Sentencing Summary Chart. That chart lists Defendant as being in  
3 Criminal History Category III, with an Offense Level of 8, and a  
4 corresponding range of 2-8 months. The United States recommends 60  
5 days' imprisonment.

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8 Respectfully submitted,

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10 KAREN P. HEWITT

11 United States Attorney

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13 /s/ Caleb E. Mason

14 Caleb E. Mason

15 Assistant U.S. Attorney  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, ) Case No. 08cr0416LAB  
Plaintiff, )  
v. )  
FRANCISCO ESPARZA-GUTIERREZ, ) CERTIFICATE OF SERVICE  
Respondent. )

IT IS HEREBY CERTIFIED THAT:

I, Caleb Mason, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of the above Status Report, dated July 18, 2008, and this Certificate of Service, dated July 18, 2008, on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them:

David Peterson, Esq.

Federal Defenders of San Diego, Inc.

225 Broadway, Suite 900

*Attorney for defendant.*

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 28, 2008.

/s/ Caleb E. Mason

CALEB E. MASON

Assistant United States Attorney

# EXHIBIT C

KAREN P. HEWITT  
 United States Attorney  
 CALEB E. MASON  
 Assistant United States Attorney  
 California State Bar No. 246653  
 Federal Office Building  
 880 Front Street, Room 6293  
 San Diego, California 92101-8893  
 Telephone: (619) 557-5956

Attorneys for Plaintiff  
 United States of America

UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

FRANCISCO ESPARZA-GUTIERREZ,

Defendant.

Case No. **08cr0416**

Date: July 28, 2008  
 Time: 3 p.m.

Honorable Larry A. Burns

**UNITED STATES' SECOND AMENDED  
 SUMMARY CHART AND MOTION  
 UNDER USSG § 3E1.1(b)**

The plaintiff, UNITED STATES OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and Caleb E. Mason, Assistant United States Attorney, hereby files its Sentencing Summary Chart and Motion under USSG § 3E1.1(b), which is based upon the files and records of this case.

DATED: July 28, 2008

Respectfully submitted,

KAREN P. HEWITT  
 United States Attorney

*/s/ Caleb E. Mason*

CALEB E. MASON  
 Assistant United States Attorney

## SENTENCING SUMMARY CHART BY: UNITED STATES

Defendant's Name: Francisco Esparza Gutierrez Docket No. 08cr0416LAB  
 Attorney's Name: Caleb E. Mason Phone No.: (619) 557-5956

Guideline Manual Used: November 1, 2007 Agree with USPO Calc.: no

Base Offense Levels: (2L1.2) 8

Reduced Base Offense Level for Minor Role [USSG § 2D1.1(a)(3)] —

Specific Offense Characteristics:

Safety Valve [USSG §§ 2D1.1(b)(9) & 5C1.2]

Victim Related Adjustment: —

Adjustment for Role in the Offense [USSG § 3B1.2]: —

Adjustment for Obstruction of Justice: —

Adjustment for Reckless Endangerment During Flight: —

Adjusted Offense Level:

— Combined (Mult. Counts) — Career Off. — Armed Career Crim. —

Adjustment for Acceptance of Responsibility:

[X] Government Motion-USSG §3E1.1(b)

Total Offense Level: -2

6

Criminal History Score: 5

Criminal History Category:

— Career Offender — Armed Career Criminal III

USSG § 5G1.1(b): Range limited by: — minimum mand. — statutory maximum

GUIDELINE RANGE:

From 2 to 8 months

Departures:

Fast-Track Early Disposition [USSG §5K3.1]

Resulting Guideline Range: Adjusted Offense Level 6 from 2 mths to 8 mths

RECOMMENDATION: 2 months imprisonment

*60 days, 58 M*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

FRANCISCO ESPARZA-GUTIERREZ,

Defendant.

Case No. **08cr0416LAB**

Date: July 28, 2008

Time: 3 p.m.

Honorable Larry A. Burns

**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that:

I, Caleb E. Mason, am a citizen of the United States over the age of 18 years and a resident of San Diego County, California; my business address is 880 Front Street, Room 6293 San Diego, California 92101-8893; I am not a party to the above-entitled action, I served the **United States' Sentencing Summary Chart and Motion under USSG § 3E1.1(b)**, on the following party, by electronically filing it with the Court's Electronic Case Filing system:

David Peterson, Esq.  
Federal Defenders of San Diego, Inc.  
*Attorney for Defendant*

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 28, 2008

*/s/ Caleb E. Mason*

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Caleb E. Mason